

U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

J.T.L., by and through his parents and guardians  
J.L. and J.L., individually and on behalf of the  
EATON VANCE MANAGEMENT HEALTH  
BENEFIT PLAN, and on behalf of similarly  
situated individuals,

Plaintiffs,

vs.

BLUE CROSS AND BLUE SHIELD OF  
MASSACHUSETTS, INC.,

Defendant.

NO.

**[REDACTED] CLASS ACTION  
COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF**

**INTRODUCTION**

For years, children suffering from severe autism had few therapeutic options for meaningful improvement. Treatment options were limited and largely unproven. Today, however, Applied Behavioral Analysis (ABA) therapy is widely recognized as one of the safest and most effective treatments for autism. It has been endorsed by numerous state and federal agencies, including the U.S. Surgeon General, the National Institute of Mental Health, the American Psychological Association, and many state Departments of Health. For many children with autism, ABA therapy often represents the best chance for living a happy and productive life.

1 For ABA therapy to be effective, however, it cannot be a half-measure. Forty years of  
 2 research and thousands of studies have shown that for ABA therapy to work, an autistic child  
 3 must follow a medically-appropriate ABA program. Such a program frequently consists of  
 4 intensive one-on-one teaching provided consistently in the child's clinical, home, school, and  
 5 other social environments.

6 This case involves J.T.L., an 8-year-old child who has been diagnosed with high-  
 7 functioning Autism Spectrum Disorder. J.T.L. has only mild developmental delays but faces  
 8 significant challenges in social interactions and communicating with others.

9 J.T.L.'s treating physician has prescribed ABA therapy to treat J.T.L.'s autism. J.T.L.'s  
 10 certified ABA therapist designed a treatment plan for J.T.L. that requires 20 hours of ABA  
 11 therapy per week in a school setting. This therapy is medically necessary to treat J.T.L.'s  
 12 autism. Because the primary symptoms of J.T.L.'s autism are deficits in his ability to  
 13 communicate with peers, therapeutic interventions need to be provided outside of a clinical  
 14 context and in settings where J.T.L. is interacting with peers. In the words of one of J.T.L.'s  
 15 treating providers: "ABA implemented in the actual environment where symptoms are  
 16 displayed will result in quicker acquisition of skills and generalized prosocial behavior."

17 Although it is medically necessary to provide ABA therapy to J.T.L. while he is in  
 18 school, Blue Cross and Blue Shield of Massachusetts, Inc. (BCBS-MA) has denied coverage to  
 19 J.T.L. for therapy provided in school based on an exclusion in the terms of its plans.  
 20 Specifically, BCBS-MA excludes coverage for ABA therapy provided "in the school setting."  
 21 This exclusion violates the Employee Retirement Income Security Act of 1974 ("ERISA"), 29  
 22 U.S.C. § 1001 *et seq.*, because it fails to comply with the federal Mental Health Parity and  
 23 Addiction Equity Act ("MHPAEA" or "Parity Act").

## I. PARTIES

1.1 J.T.L.'s health insurance is provided by his father's employer. J.T.L. is a beneficiary, as defined by 29 U.S.C. § 1002(8), of a Blue Care Elect Preferred Provider Plan, which is an "employee welfare benefits plan" ("Plan"), as defined by 29 U.S.C. § 1002(1).

1.2 Defendant. Defendant BCBS-MA is a Massachusetts insurance corporation engaged in the business of insurance in Massachusetts and throughout the United States, including in Washington.

1.3 BCBS-MA is both the insurer and claims administrator for the Plan.

1.4 At all relevant times, BCBS-MA acted as a fiduciary under ERISA, as defined by 29 U.S.C. § 1002(21)(A).

## II. JURISDICTION AND VENUE

2.1 Subject Matter Jurisdiction. This Court has subject matter jurisdiction over Plaintiffs' claims under 29 U.S.C. § 1132(e)(1).

2.2 Personal Jurisdiction. This Court has personal jurisdiction over Defendant because BCBS-MA conducts business in King County, Washington.

2.3 Venue. Venue is proper in the Western District of Washington under 29 U.S.C. § 1132(e)(2) because Plaintiffs reside in King County, Washington and BCBS-MA's breach took place in King County, Washington.

## III. AUTISM & ABA THERAPY

3.1 Autism spectrum disorders, also referred to as pervasive developmental disorders, are neurological conditions characterized by "persistent deficits in social communication and social interaction across multiple contexts" and "restricted, repetitive patterns of behavior, interests, or activities." Am. Psychiatric Ass'n, *Autism Spectrum Disorder*, *Diagnostic and Statistical Manual of Mental Disorders* (5th ed. 2013) ("DSM-V"). In order for a child to be diagnosed with autism, symptoms must be present in early

developmental periods and cause “clinically significant impairment in social, occupational, or other important areas of current functioning.” *Id.*

3.2 According to the most recent estimates from the Centers for Disease Control and Prevention, one in every sixty-eight American children has been diagnosed with an autism spectrum disorder. *See CDC, Prevalence of Autism Spectrum Disorder Among Children Aged 8 Years*, Morbidity and Mortality Weekly Report (Mar. 28, 2014), *available at* [http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6302a1.htm?s\\_cid=ss6302a1\\_w](http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6302a1.htm?s_cid=ss6302a1_w).

3.3 Applied Behavioral Analysis (“ABA”) therapy is widely accepted as the most effective form of therapy for autistic children. Caroline Giordano, *Uses of the Class Action Device in Autism Health Benefits Litig.*, 58 Wayne L. Rev. 157, 161 (2012). ABA therapy is a form of behavioral conditioning that “involves repetitive, task-and-reward-based activities designed to teach children skills such as imitating others, making eye contact, listening, and appropriately answering questions.” *Id.*

#### IV. THE FEDERAL MENTAL HEALTH PARITY ACT

4.1 The Paul Wellstone and Pete Dominici Mental Health Parity and Addiction Equity Act of 2008 (“MHPAEA” or “Parity Act”) precludes group health insurance plans that cover mental health services from imposing financial requirements or treatment limitations on mental health benefits that are more restrictive than the requirements and limitations imposed on “substantially all medical and surgical benefits.” 29 U.S.C. § 1185a; 42 U.S.C. § 300gg-26.

4.2 Under the Parity Act, an insurer covering mental health services must provide coverage that is “in parity” with medical and surgical benefits.

4.3 The regulations implementing the federal Parity Act clarify that a Plan may not impose nonquantitative treatment limitations on mental health services that are not comparable to or are more stringent than those applied to medical or surgical benefits. *See* 29 C.F.R. § 2590.712(c)(4)(i).

1           4.4     Restrictions based on “facility type” and “other criteria that limit the scope or  
2 duration of benefits for services provided under the plan or coverage” are examples of  
3 nonquantitative treatment limitations. *Id.* § 2590.712(c)(4)(ii)(H).

4           4.5     ABA therapy is a mental health service.

5           4.6     BCBS-MA’s exclusion of coverage for ABA therapy provided in a school  
6 setting is an impermissible nonquantitative treatment limitation based on facility type that is not  
7 applied to medical or surgical benefits.

## 8                               **V.     PLAINTIFFS’ FACTUAL ALLEGATIONS**

9           5.1     J.T.L. is a subscriber to and beneficiary of the Eaton Vance Management Health  
10 Benefit Plan.

11          5.2     J.T.L. is an eight-year-old boy who has been diagnosed with autism by his  
12 treating physician. His treating physician referred J.T.L. to a Board Certified Behavior Analyst  
13 for clinical ABA therapy to treat his autism. J.T.L.’s treating physician has approved the  
14 treatment plan developed by his ABA therapist.

15          5.3     J.T.L. receives ABA therapy from Apple Consulting in Bellevue, Washington.  
16 J.T.L.’s therapy is overseen by a Board Certified Behavior Analyst.

17          5.4     J.T.L.’s ABA therapist is a covered provider under the terms of the plan.

18          5.5     J.T.L.’s treatment plan calls for 6 hours per week of ABA therapy provided in a  
19 clinical setting and 20 hours per week of ABA therapy provided in a school setting.

20          5.6     J.T.L.’s therapist does not work for, is not affiliated with, and is not paid by  
21 J.T.L.’s school. J.T.L.’s therapist provides services to him both in a clinical setting and in a  
22 school setting.

23          5.7     J.T.L.’s parents and doctors have observed marked improvements in J.T.L.’s  
24 social interactions as a result of the therapy he has received in a school setting. J.T.L.’s  
25 pediatrician wrote that he has made “impressive improvements with ABA therapy at school.”  
26 J.T.L.’s neurologist agrees, writing that he “will best benefit from services delivered both in the  
27

1 school and home settings in order to provide consistency and oversight of service provision and  
2 progress oversight.”

3 5.8 Despite the agreement among all of J.T.L.’s providers that J.T.L.’s ABA therapy  
4 will be most effective if provided in a school setting, BCBS-MA has denied coverage for any  
5 hours of ABA therapy provided in a school setting.

6 5.9 BCBS-MA initially denied coverage for ABA therapy provided to J.T.L. in a  
7 school setting on February 12, 2015.

8 5.10 J.T.L. and his parents filed an internal grievance challenging the denial of  
9 coverage in May 2015. BCBS-MA upheld its decision not to cover any ABA therapy provided  
10 to J.T.L. in a school setting. A copy of BCBS-MA’s letter dated June 25, 2015 affirming its  
11 coverage determination is attached hereto as Exhibit A.

12 5.11 J.T.L. and his parents appealed the denial through their authorized  
13 representative. BCBS-MA denied the appeal on November 17, 2015. A copy of the BCBS-  
14 MA’s letter denying the appeal is attached hereto as Exhibit B.

15 5.12 Plaintiffs have exhausted BCBS-MA’s mandatory internal grievance and appeal  
16 process.

17 5.13 BCBS-MA’s denial of coverage for ABA therapy provided to J.T.L. in a school  
18 setting is based on an exclusion in the Plan. The Plan states that “for services related to autism  
19 spectrum disorders, no benefits are provided for: . . . services that are furnished, or that are  
20 required by law to be furnished, by a school or in a school-based setting.” *See* Exhibit B at 4.

21 5.14 As stated in its letter rejecting Plaintiffs’ internal appeal of the denial of  
22 coverage, BCBS-MA “is not questioning the medical necessity of the service or making a  
23 medical judgment.” Instead, BCBS-MA is relying on the Plan’s exclusion for services to treat  
24 autism provided “in a school-based setting.” *See* Exhibit B at 1.

6.1 Class Definition: The Class consists of all individuals who: (1) have been, are, or will be beneficiaries of an ERISA-governed health plan that has been or will be delivered, issued for delivery, or renewed by defendant BCBS-MA; (2) have been or will be diagnosed with an autism spectrum disorder; and (3) have required at any time within six years prior to the filing of this complaint, require, or will require ABA therapy in a school setting as part of a treatment plan approved by their treating physician.

6.2 The definition of the Class is clear and members of the Class are easily identifiable on the basis of objective information. BCBS-MA maintains records of its subscribers and coverage determinations. Children who have been diagnosed with an autism spectrum disorder and whose providers have sought authorization or reimbursement for ABA therapy provided in school as part of a physician-approved treatment plan can be identified from BCBS-MA's records through use of diagnostic and procedure codes.

6.3 The number of children whose treatment for autism spectrum disorder calls for ABA therapy delivered in school as part of a physician-approved treatment plan and who are beneficiaries of an ERISA-governed health plan insured by BCBS-MA is expected to number in the hundreds and is so large that joinder of all Class members is impracticable.

6.4 Plaintiffs' claims are typical of those of Class members. J.T.L. has been diagnosed with an autism spectrum disorder. He is a beneficiary of an ERISA-governed health plan insured by BCBS-MA. As a result of BCBS-MA's unlawful policy and practice, J.T.L.'s parents have been forced to either forego ABA therapy in a school setting or pay out-of-pocket for such ABA therapy.

1           6.5     Plaintiffs are adequate representatives of the Class. Plaintiffs have abided by all  
 2 requirements of the Plan and have exhausted mandatory administrative appeals of BCBS-MA's  
 3 coverage denial. Plaintiffs want to ensure that every child with an autism spectrum disorder is  
 4 able to get needed ABA therapy in accordance with the treatment plans issued by their doctors,  
 5 and will fairly and adequately represent the interests of the entire Class.

6           6.6     Plaintiffs have retained experienced and competent class counsel. Counsel have  
 7 the knowledge, experience, and financial resources necessary to prosecute this action on behalf  
 8 of the Class.

9           6.7     There are questions of law or fact common to the Class, including but not  
 10 limited to the following:

11                 a.     Whether BCBS-MA's refusal to cover ABA therapy provided in a school  
 12 setting is a nonquantitative limitation based on facility type under 29 C.F.R. § 2590.712;

13                 b.     Whether BCBS-MA applies that nonquantitative treatment limitation to  
 14 substantially all medical or surgical services for which it provides coverage;

15                 c.     Whether BCBS-MA's exclusion of coverage for ABA therapy provided  
 16 in a school setting violates the federal Parity Act;

17                 d.     Whether BCBS-MA's exclusion of coverage for ABA therapy provided  
 18 in a school setting breaches BCBS-MA's fiduciary duties to beneficiaries; and

19                 e.     Whether BCBS-MA's coverage determinations are entitled to deference.

20           6.8     BCBS-MA has acted on grounds generally applicable to the Class. In particular,  
 21 BCBS-MA has adopted an exclusion that results in the improper limitation of ABA therapy to  
 22 treat autism spectrum disorders. Thus, declaratory relief is appropriate for the whole Class.  
 23 Certification is therefore proper under Federal Rule of Civil Procedure 23(b)(2).



**VII. COUNT I**

**Claim for Recovery of Benefits, Clarification of Rights under the Plan, and Clarification  
of Right to Future Benefits under the Plan  
ERISA § 502(a)(1)(B); 29 U.S.C. § 1132(a)(1)(B)**

7.1 Plaintiffs re-allege each and every allegation set forth in the proceeding paragraphs.

7.2 ERISA provides that a participant or beneficiary may bring an action to “recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan.” ERISA § 502(a)(1)(B); 29 U.S.C. § 1132(a)(1)(B).

7.3 Plaintiffs and the Class are entitled to recover benefits they have been denied on the basis of the improper exclusion for medically-necessary ABA therapy provided in a school setting, as described above.

7.4 Plaintiffs and the Class are entitled to a declaration of present and future rights to benefits for medically-necessary ABA therapy that is part of a treatment plan approved by a treating physician, without regard to whether the therapy is provided in a school setting.

**VIII. COUNT II**

**Claim to Enjoin Acts and Practices in Violation of the Terms of the Plan, to Obtain Other  
Equitable Relief, and to Enforce the Terms of the Plan  
ERISA § 502(a)(3); 29 U.S.C. § 1132(a)(3)**

8.1 Plaintiffs re-allege each and every allegation set forth in the proceeding paragraphs.

8.2 ERISA provides that a participant or beneficiary may “enjoin any act or practice which violates any provision of [ERISA] or the terms of the plan.” ERISA § 502(a)(3); 29 U.S.C. § 1132(a)(3)(A). A participant or beneficiary may also obtain appropriate equitable relief to redress violations of those provisions. ERISA § 502(a)(3)(B); 29 U.S.C. § 132(a)(3)(B).

8.3 Plaintiffs and the Class seek to enjoin BCBS-MA from continuing to apply an exclusion based on facility type that is inconsistent with the federal Parity Act. In particular,

1 Plaintiffs and the Class seek to enjoin BCBS-MA's practice of denying coverage for medically-  
 2 necessary ABA therapy because it is provided in a school setting.

3 8.4 To the extent that full relief is not available under ERISA § 502(a)(1)(b), 29  
 4 U.S.C. § 1132(a)(1)(B) or ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), Plaintiffs and the Class  
 5 seek all other appropriate equitable relief to redress BCBS-MA's improper coverage denials,  
 6 including but not limited to equitable reformation, reimbursement, equitable accounting,  
 7 surcharge, and disgorgement of all profits flowing from the improper denials. *See* ERISA  
 8 § 502(a)(3)(B); 29 U.S.C. § 132(a)(3)(B)

### 9 IX. COUNT III

#### 10 Breach of Fiduciary Duties

11 **ERISA § 502(a)(2); 29 U.S.C. § 1132(a)(2); ERISA § 404(A)(1); 29 U.S.C. § 1104(A)**

12 9.1 Plaintiffs re-allege each and every allegation set forth in the proceeding  
 13 paragraphs.

14 9.2 BCBS-MA is a fiduciary under ERISA because it makes benefit determinations  
 15 and reviews and finally decides appeals of denied claims under the ERISA plans it insures. 29  
 16 U.S.C. § 1002(21)(A).

17 9.3 ERISA imposes strict fiduciary duties on plan fiduciaries. Fiduciaries are  
 18 required to administer plans "solely in the interests of the participants and beneficiaries" and  
 19 "in accordance with the documents and instruments governing the plan . . . ." 29 U.S.C.  
 20 § 1104(a)(1)(D).

21 9.4 Beneficiaries may recover equitable and remedial relief for breach of those  
 22 duties on behalf of the plan. 29 U.S.C. § 1132(a)(2); 29 U.S.C. § 1109(a).

23 9.5 BCBS-MA breached its fiduciary duties to Plaintiffs and the Class by handling  
 24 claims under its insured plans in a manner that is inconsistent with the federal Parity Act.  
 25 BCBS-MA's policy and practice of denying coverage for ABA therapy provided in a school  
 26 setting is inconsistent with the federal Parity Act's requirements for nonquantitative treatment  
 27

limitations, including those based on facility type. BCBS-MA's application of the illegal exclusion has reduced the value of the plan.

# **X. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, on their own behalf and on behalf of the members of the Class, pray for judgment against Defendant as follows:

- A. Certification of the proposed Class;
  - B. Appointment of Plaintiffs as representatives of the Class;
  - C. Appointment of the undersigned counsel as counsel for the Class;
  - D. An order enjoining Defendant or its affiliates, agents, or other related entities, as provided by law, from excluding from coverage medically-necessary ABA therapy provided in a school setting, as set forth herein;
  - E. An award to Plaintiffs and the Class of damages and/or equitable relief, as allowed by law;
  - F. An award to Plaintiffs and the Class of attorneys' fees and costs under 29 U.S.C. § 1132(g)(1), or as otherwise allowed by law or equity;
  - G. Leave to amend this Complaint to conform to the evidence presented at trial;
- and
- H. Orders granting such other and further relief as the Court deems necessary, just, and proper.

1 RESPECTFULLY SUBMITTED AND DATED this 20th day of April, 2016.

2 TERRELL MARSHALL LAW GROUP PLLC

3  
4 By: /s/ Toby J. Marshall, WSBA #32726  
5 Toby J. Marshall, WSBA #32726  
6 Email: tmarshall@terrellmarshall.com

7 By: /s/ Blythe H. Chandler, WSBA #43387  
8 Blythe H. Chandler, WSBA #43387  
9 Email: bchandler@terrellmarshall.com  
10 936 North 34th Street, Suite 300  
11 Seattle, Washington 98103-8869  
12 Telephone: (206) 816-6603  
13 Facsimile: (206) 319-5450

14 *Attorneys for Plaintiffs*

- Exhibit A -

June 25, 2015

[REDACTED]

Dear [REDACTED]:

I am responding to your grievance that we received on May 27, 2015. You asked us to provide information regarding services that your son [REDACTED] received from [REDACTED] from January 20, 2015, through January 30, 2015 (claim# 26151320477300).

The claim was denied as benefits are not available because the claim was submitted without a valid diagnosis code.

The case that you reference, 98800DVH00, was regarding ABA services. [REDACTED] requested authorization to provide benefits for ABA services in a school setting. Services in a school setting would not be approved but services at the home address or in the provider's office setting would be approved. I have enclosed the pages from your Plan that describe this coverage for your review.

You and/or [REDACTED] may submit a request to appeal the denied services. You would include any information that would support the rationale to have the services in a school setting.

I have also enclosed our Medical Policy regarding outpatient psychotherapy as well as the pages from your Plan that describe the appeals process per your request.

If you (or your authorized representative) have any questions about this, please call me directly at 617-246-6365 or you can call 1-800-472-2689 and ask for me. You can also e-mail me at [thomas.o'donnell@bcbsma.com](mailto:thomas.o'donnell@bcbsma.com).

Sincerely,



Thomas O'Donnell  
Case Specialist  
Member Grievance Program

Enclosure:

- (126883) Blue Care Elect Preferred Plan pages 41-43, 61-62, 72-80
- Medical Policy# 423 Outpatient Psychotherapy (1/2015)
- Clinical notes regarding Case# 9880DVH00

- Exhibit B -





November 17, 2015

Mira Posner  
16225 NE 87<sup>th</sup> Street, Suite A-2  
Redmond, WA 98052

Re: [REDACTED]

Dear Ms. Posner:

I am responding to your grievance that we received on August 12, 2015 as authorized representative for [REDACTED]. Your request was for us to provide provide benefits for [REDACTED] to receive applied behavioral analysis therapy services at [REDACTED] in 2015 and going forward to treat [REDACTED] diagnosis of autism spectrum disorder. We have claims on file for the applied behavioral analysis therapy services [REDACTED] received at [REDACTED] from January 20, 2015 through June 10, 2015. The claim amount is \$8,723.75.

After considering [REDACTED] situation, we cannot approve your request because under the terms of Mr. and Mrs. [REDACTED] Blue Care Elect Preferred Plan for services related to autism spectrum disorders, no benefits are provided for: services that are furnished by school personnel under an individualized education program; or services that are furnished, or that are required by law to be furnished, by a school or in a school-based setting, even when it is medically necessary.

We are not questioning the medical necessity of the service or making a medical judgment.

In your letter, you indicated that for ABA to have the most impact for [REDACTED] that it should be provided in at his school and that he has already shown benefits while receiving the care in a school. We considered what you told us in making our decision. However, in fairness to all members covered under this plan we must adhere to how the benefits are outlined in the plan.

I have enclosed the pages of your Plan regarding Autism Spectrum Disorders Services upon which this decision was based. This completes our grievance process.

There are other resources to help you: for questions about your appeals rights, this notice, or for assistance, you may contact the Employee Benefits Security Administration at 1-866-444-EBSA (3272). Additionally, a consumer assistance program may be able to assist you at 1-800-272-4232.

If at any time you need assistance locating a provider, please contact Member Service at the toll free telephone number on your BCBSMA ID card, or you can utilize our "**Find a Doctor**" tool online by visiting Member Central at [www.bluecrossma.com](http://www.bluecrossma.com) and clicking "Find a Doctor."

If you (or your authorized representative) would like a copy of the records related to your request, please send me a written request and we will provide them to you free of charge. And, if you belong to a plan governed by the federal ERISA law, you have the right to bring a lawsuit under Section 502(a) of ERISA if you continue to disagree after completing the formal grievance process. The Plan requires you to commence any lawsuit seeking review of this denial no later than two years from the date of this letter. If you do not meet this deadline, you may be barred by the court from any further review.

Please note that this letter does not constitute a waiver of any of the Plan's provisions including the Plan's anti-assignment provision.

If you (or your authorized representative) have any questions about this, please call me directly at 617-246-4220 or you can call 1-800-472-2689 and ask for me. You can also e-mail me at [brendon.gianatassio@bcbsma.com](mailto:brendon.gianatassio@bcbsma.com).

Sincerely,



Brendon Gianatassio  
Case Specialist  
Member Grievance Program

Enclosures:

- Blue Care Elect Preferred Plan pages 31-32, 61-62 (126883)
- Language Assistance and Treatment & Diagnosis Codes Notice



## Part 5 – Covered Services (continued)

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**IMPORTANT:** Refer to the *Schedule of Benefits* for your plan option for the cost share amounts that you must pay for *covered services* and for the *benefit limits* that may apply to specific *covered services*. Once you reach your *benefit limit* for a specific *covered service*, no more benefits are provided by *Blue Cross and Blue Shield* for those services or supplies.

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### Ambulance Services

This health plan covers ambulance transport. This coverage includes:

- **Emergency Ambulance.** This includes an ambulance that takes you to an emergency medical facility for *emergency medical care*. For example, this may be an ambulance that takes you from an accident scene to the hospital. Or, it may take you from your home to a hospital due to a heart attack. This also means an air ambulance that takes you to a hospital when your emergency medical condition requires that you use an air ambulance rather than a ground ambulance. If you need help, call 911. Or, call your local emergency phone number.
- **Other Ambulance.** This includes *medically necessary* transport by an ambulance. For example, this may be an ambulance that is required to take you to or from the nearest hospital (or other covered health care facility) to receive care. It also includes an ambulance that is needed for a *mental condition*.

**No benefits** are provided: for taxi or chair car service; or to transport you to or from your medical appointments.

### Autism Spectrum Disorders Services

This health plan covers *medically necessary* services to diagnose and treat autism spectrum disorders when the *covered services* are furnished by a *covered provider*. This may include (but is not limited to): a physician; a psychologist; or a *covered provider* who is an autism services provider (such as a board certified behavior analyst who is employed by a preferred or non-preferred facility or agency or a board certified behavior analyst who has been designated for you and approved for coverage by *Blue Cross and Blue Shield*). This coverage includes:

- Assessments, evaluations (including neuropsychological evaluations), genetic testing, and/or other tests to determine if a *member* has an autism spectrum disorder.
- Habilitative and rehabilitative care. This is care to develop, maintain, and restore, to the maximum extent practicable, the functioning of the *member*. This care includes, but is not limited to, applied behavior analysis that is supervised by a board certified behavior analyst.
- Psychiatric and psychological care that is furnished by a *covered provider* such as: a physician who is a psychiatrist; or a psychologist.
- Therapeutic care that is furnished by a *covered provider*. This may include (but is not limited to): a speech, occupational, or physical therapist; or a licensed independent clinical social worker.

These *covered services* also include covered drugs and supplies that are furnished by a covered pharmacy when your prescription drug coverage is provided under this PPO health plan or under a *Blue Cross and Blue Shield* prescription drug plan.

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WORDS IN ITALICS ARE EXPLAINED IN PART 2.

## Part 5 – **Covered Services** (continued)

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**IMPORTANT:** Refer to the *Schedule of Benefits* for your plan option for the cost share amounts that you must pay for *covered services* and for the *benefit limits* that may apply to specific *covered services*. Once you reach your *benefit limit* for a specific *covered service*, no more benefits are provided by *Blue Cross and Blue Shield* for those services or supplies.

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Your coverage for these *covered services* is provided to the same extent as coverage is provided for similar *covered services* to diagnose and treat a physical condition.

When physical, speech/language, and/or occupational therapy is furnished as part of the treatment of an autism spectrum disorder, a *benefit limit* will not apply to these services.

This coverage for autism spectrum disorders does not affect an obligation to provide services to an individual under an individualized family service plan, an individualized education program, or an individualized service plan. This means that, for services related to autism spectrum disorders, no benefits are provided for: services that are furnished by school personnel under an individualized education program; or services that are furnished, or that are required by law to be furnished, by a school or in a school-based setting.

### **Cardiac Rehabilitation**

This health plan covers *outpatient* cardiac rehabilitation when it is furnished for you by a cardiac rehabilitation provider. You will be covered for as many visits as are *medically necessary* for your condition. This coverage is provided according to the regulations of the Massachusetts Department of Public Health. This means that your first visit must be within 26 weeks of the date that you were first diagnosed with cardiovascular disease. Or, you must start within 26 weeks after you have had a cardiac event. *Blue Cross and Blue Shield* must determine through medical documentation that you meet one of these conditions: you have cardiovascular disease or angina pectoris; or you have had a myocardial infarction, angioplasty, or cardiovascular surgery. (This type of surgery includes: a heart transplant; or coronary bypass graft surgery; or valve repair or replacement.) For angina pectoris, this health plan covers only one course of cardiac rehabilitation for each *member*.

**No benefits** are provided for: club membership fees (except when they are covered by this health plan as a fitness benefit); counseling services that are not part of your cardiac rehabilitation program (for example, these *non-covered services* may be educational, vocational, or psychosocial counseling); medical or exercise equipment that you use in your home; services that are provided to your family; and additional services that you receive after you complete a cardiac rehabilitation program.

### **Chiropractor Services**

This health plan covers *outpatient* chiropractic services when they are furnished for you by a chiropractor who is licensed to furnish the specific *covered service*. This coverage includes: *diagnostic lab tests* (such as blood tests); diagnostic x-rays other than magnetic resonance imaging (MRI), computerized axial tomography (CT scans), and other imaging tests; and *outpatient* medical care services, including spinal manipulation.

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WORDS IN ITALICS ARE EXPLAINED IN PART 2.



## Part 6 – Limitations and Exclusions (continued)

for those that are described in Part 5); heating pads; hot water bottles; humidifiers; orthopedic and corrective shoes that are not part of a leg brace; raised toilet seats; and shoe (foot) inserts.

- Special clothing, except for: gradient pressure support aids for lymphedema or venous disease; clothing needed to wear a covered device (for example, mastectomy bras and stump socks); and therapeutic/molded shoes and shoe inserts for a *member* with severe diabetic foot disease.
- Self-monitoring devices, except for certain devices that *Blue Cross and Blue Shield* decides would give a *member* having particular symptoms the ability to detect or stop the onset of a sudden life-threatening condition.

### Missed Appointments

No benefits are provided for charges for appointments that you do not keep. Physicians and other health care providers may charge you if you do not keep your scheduled appointments. They may do so if you do not give them reasonable notice. You must pay for these costs. Appointments that you do not keep are not counted against any *benefit limits* that apply to your coverage in this health plan.

### Non-Covered Providers

No benefits are provided for any services and supplies that are furnished by the kinds of health care providers that are not covered by this health plan. This Subscriber Certificate describes the kinds of health care providers that are covered by the health plan. (See “*covered providers*” in Part 2 of this Subscriber Certificate.)

### Non-Covered Services

No benefits are provided for:

- A service or supply that is not described as a *covered service*. Some examples of non-covered services are: acupuncture; private duty nursing; and reversal of sterilization.
- A service or supply that is furnished along with a non-covered service.
- A service or supply that does not conform to *Blue Cross and Blue Shield medical policies*.
- A service or supply that does not conform to *Blue Cross and Blue Shield medical technology assessment criteria*.
- A service or supply that is not considered by *Blue Cross and Blue Shield* to be *medically necessary* for you. The only exceptions are for: certain routine or other preventive health care services or supplies; certain covered voluntary health care services or supplies; and donor suitability for bone marrow transplant.
- A service or supply that is furnished by a health care provider who has not been approved by *Blue Cross and Blue Shield* for payment for the specific service or supply.
- A service or supply that is furnished to someone other than the patient, except as described in this Subscriber Certificate for: hospice services; and the harvesting of a donor’s organ (or tissue) or stem cells when the recipient is a *member*. This coverage includes the surgical removal of the donor’s organ (or tissue) or stem cells and the related *medically necessary* services and tests that are required to perform the transplant itself.
- A service or supply that you received when you were not enrolled in this health plan. (The only exception is for routine nursery charges that are furnished during an enrolled mother’s maternity admission and certain other newborn services.)
- A service or supply that is furnished to all patients due to a facility’s routine admission requirements.
- A service or supply that is related to achieving pregnancy through a surrogate (gestational carrier).

WORDS IN ITALICS ARE EXPLAINED IN PART 2.

## Part 6 – Limitations and Exclusions (continued)

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- Refractive eye surgery for conditions that can be corrected by means other than surgery. This type of surgery includes radial keratotomy.
- Whole blood; packed red blood cells; blood donor fees; and blood storage fees.
- A health care provider's charge for shipping and handling or taxes.
- A health care provider's charge to file a claim for you. Also, a health care provider's charge to transcribe or copy your medical records.
- A separate fee for services furnished by: interns; residents; fellows; or other physicians who are salaried employees of the hospital or other facility.
- Expenses that you have when you choose to stay in a hospital or another health care facility beyond the discharge time that is determined by *Blue Cross and Blue Shield*.

### Personal Comfort Items

No benefits are provided for items or services that are furnished for your personal care or for your convenience or for the convenience of your family. Some examples of non-covered items or services are: telephones; radios; televisions; and personal care services.

### Private Room Charges

While you are an *inpatient*, this health plan covers *room and board* based on the semiprivate room rate. If a private room is used, you must pay all costs that are more than the semiprivate room rate.

### Services and Supplies Furnished After Termination Date

No benefits are provided for services and supplies that are furnished after your termination date in this health plan. There is one exception. This health plan will continue to provide coverage for *inpatient covered services*, but only if you are receiving covered *inpatient* care on your termination date. In this case, coverage will continue to be provided until all the benefits allowed by your health plan have been used up or the date of discharge, whichever comes first. But, this does not apply if your coverage in this health plan is canceled for misrepresentation or fraud.

### Services Furnished to Immediate Family

No benefits are provided for a *covered service* that is furnished by a health care provider to himself or herself or to a member of his or her immediate family. The only exception is for drugs that this health plan covers when they are used by a physician, dentist, or podiatrist while furnishing a *covered service*. "Immediate family" means any of the following members of a health care provider's family:

- Spouse or spousal equivalent.
- Parent, child, brother, or sister (by birth or adoption).
- Stepparent, stepchild, stepbrother, or stepsister.
- Father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law. (For purposes of providing *covered services*, an in-law relationship does not exist between the provider and the spouse of his or her wife's (or husband's) brother or sister.)
- Grandparent or grandchild.

For the purposes of this exclusion, the immediate family members listed above will still be considered immediate family after the marriage which had created the relationship is ended by divorce or death.

WORDS IN ITALICS ARE EXPLAINED IN PART 2.





### **Additional Information**

#### **Language Assistance**

To obtain language assistance, please call 1-800-472-2689.

SPANISH (Español): Para obtener asistencia en Español, llame al 1-800-472-2689.

TAGALOG (Tagalog): Kung kailangan ninyo ang tulong sa Tagalog tumawag sa 1-800-472-2689.

CHINESE (中文): 如果需要中文的帮助, 请拨打这个号码1-800-472-2689.

NAVAJO (Dine): Dinek'ehgo shika at'ohwol ninisingo, kwijigo holne' 1-800-472-2689.

#### **Treatment and Diagnosis Codes**

Treatment and Diagnosis codes are submitted by health care providers to Blue Cross Blue Shield of Massachusetts and used to determine coverage for services requested. Members likely know about their treatment and diagnosis based on their interactions with their health care provider. However, members may request that any applicable treatment and diagnosis codes and their meanings, for the services listed in the enclosed notice, be sent to them by Blue Cross Blue Shield of Massachusetts. To make such a request, the member or their authorized representative must submit a signed and dated request to Member Service, and must also include a copy of the notice accompanying this statement to the following address:

Blue Cross Blue Shield of Massachusetts  
Member Service Center  
P.O. Box 9134  
North Quincy, MA 02171-9134

For more information, please call the toll-free Member Service number on your ID card.

- Exhibit C -





## Behavioral Health Policy

### Applied Behavioral Analysis (ABA)

#### Table of Contents

- [Policy: Commercial](#)
- [Policy: Medicare](#)
- [Authorization Information](#)
- [Coding Information](#)
- [Description](#)
- [Policy History](#)
- [Information Pertaining to All Policies](#)
- [References](#)

#### Policy Number: 736

BCBSA Reference Number: N/A

NCD/LCD: N/A

#### Related Policies

- Applied Behavior Analysis Service Request Form, #[144](#)
- Outpatient Psychotherapy, #[423](#)
- Genetic Testing, Including Chromosomal Microarray Analysis and Next-Generation Sequencing Panels, for the Evaluation of Developmental Delay-Intellectual Disability, Autism Spectrum Disorder, and/or Congenital Anomalies, #[228](#)

#### Policy

**Commercial Members: Managed Care (HMO and POS), PPO, and Indemnity  
Medicare HMO Blue<sup>SM</sup> and Medicare PPO Blue<sup>SM</sup> Members**

#### Applied Behavioral Analysis Service Request Form

Providers must complete the form. [Click here](#) for the Applied Behavioral Analysis Service Request Form (#144).

An initial course of ABA treatment may be considered **MEDICALLY NECESSARY** for an individual with autism spectrum disorder (ASD) **when** a state mandate requires or a benefit plan explicitly provides coverage for ABA and **ALL** of the following **selection criteria** are met:

1. A diagnosis of ASD has been made by a licensed medical professional licensed psychologist, licensed psychiatrist; and
2. ABA is considered an effective intervention for ASD based on consensus and evidence based practice guidelines from relevant professional societies and consistent with peer reviewed literature; and
3. The goals of intervention are appropriate for the individual's age and impairments and must be aligned with the patient's deficits as described in the evaluation:
  - Social, communication, or language skills or adaptive functioning that have been identified as deficient relative to age expected norms, which form the basis for an individualized treatment plan.

- The treatment plan should include treatment with a certified ABA provider (in accordance with state law and benefit plan requirements) and include behaviors or deficits that are interfering with social, communication or language skills or adaptive functioning form the basis for an individualized treatment plan; and
4. Documentation is provided which describes the *individual-specific treatment plan* that includes all of the following:
    - a. Addresses the identified behavioral, psychological, family, and medical concerns; and
    - b. Has measurable goals in objective and measurable terms based on standardized assessments that address the behaviors and impairments for which the intervention is to be applied (Note: this should include, for each goal, baseline measurements, progress to date and anticipated timeline for achievement based on both the initial assessment and subsequent interim assessments over the duration of the intervention); and
    - c. Documents that ABA services will be delivered by an appropriate provider who is licensed or certified according to the requirements of applicable state laws and benefit plan requirements.
    - d. ABA may be conducted in settings outside the home including parks, daycare, stores, visiting relatives, medical appointments or religious settings as applicable to the deficits identified in the treatment plan

Note: Where such requirements apply, the provider of ABA should be within the requirements of the specific state law or as described by the benefit plan.

Continuation of ABA treatment may be considered **MEDICALLY NECESSARY** for an individual with ASD **when** a state mandate requires or a benefit plan explicitly provides coverage for ABA and **ALL** of the following **selection criteria** are met:

1. The individual has met criteria for an initial course of ABA; and
2. The *individual-specific treatment plan* will be updated and submitted, in general, every 5- 6 months or as required by a state mandate. Note: treatment plans may be required more often than every 5-6 months when warranted by the individual circumstances; and
3. For each goal in the *individual-specific treatment plan*, the following is documented:
  - a. Progress to date; and
  - b. Anticipated timeline for achievement of the goal based on both the initial assessment and subsequent interim assessments over the duration of the intervention;
4. The *individual-specific treatment plan* includes age and impairment appropriate goals that are aligned with the deficits as described in the evaluation and measures of progress:
  - a. The treatment plan should include measures of the progress made with social skills, communication skills, language skills and adaptive functioning. Clinically significant progress in social skills, communication skills, language skills, and adaptive functioning must be documented as follows:
    - i. Interim progress assessment at least every 6 months based on clinical progress toward treatment plan goals; and
  - b. The treatment plan should include measures of the specific behaviors or deficits targeted and also include assessments of social skills, communication skills, language skills, and adaptive functioning that reflect progress in the areas that were identified as negatively affected by the targeted behaviors and deficits. Clinically significant progress in social skills, communication skills, language skills, and adaptive functioning must be documented as follows:
    - i. Interim progress assessment at least every 5-6 months based on clinical progress toward treatment plan goals.

Supervision of behavior analysts providing ABA treatment is **NOT MEDICALLY NECESSARY** for an individual with ASD **when** a state mandate requires or a benefit plan explicitly provides coverage for ABA and **ALL** of the following **selection criteria** are met:

**ABA** treatment is **NOT MEDICALLY NECESSARY** when the criteria above are not met or when there is no documentation of clinically significant developmental progress in any one of the following areas: social

skills, communication skills, language skills, or adaptive functioning as measured by either a) interim progress assessment or b) developmental status as measured by standardized tests.

**Note:** Benefits, state mandates and regulatory requirements should be verified prior to application of criteria listed above.

### Prior Authorization Information

Pre-service approval is required for all inpatient services for all products.

See below for situations where prior authorization may be required or may not be required.

Yes indicates that prior authorization is required.

No indicates that prior authorization is not required.

N/A indicates that this service is primarily performed in an inpatient setting.

	Outpatient
<b>Commercial Managed Care (HMO and POS)</b>	Yes
<b>Commercial PPO and Indemnity</b>	Yes
<b>Medicare HMO Blue<sup>SM</sup></b>	Yes
<b>Medicare PPO Blue<sup>SM</sup></b>	Yes

### Commercial Members: Managed Care (HMO and POS)

Authorization is required for the initiation and continuance of Applied Behavioral Analysis (ABA) Services.

This type of care must be provided by a Board Certified Behavioral Analyst (BCBA) and or a BCBA who supervises plans and directs a treatment team composed of paraprofessionals who perform the majority of the ABA interventions.

#### Treatment Planning

- Treatment plans must specify:
  - the types of service to be provided
  - how the interventions will be aligned with the patient's deficits described in the evaluation
  - coordination of care within the school setting (supplying IEP) for all children with diagnosis of ASD age 3 and higher
  - number of hours per week for each type of service requested and the behaviors/deficits that are therapeutically being targeted
  - measurable behavioral goals
  - how the coordination with the school, and medical/allied health providers will be sustained and clearly documented in the progress notes.

#### Treatment Settings

- ABA may be conducted in settings outside the home including, parks, daycare, stores, visiting relatives, medical appointments and or religious settings.
- ABA services must be supervised by a state-licensed provider or a BCBA who is experienced in ASD and provides direct supervision to the treatment team
- Parental Involvement
- Parents must attend at least 30% of the ABA treatment sessions in addition to Parent training sessions.
- Continued approval of ABA services will require ongoing documentation which supports the patient's progress towards the documented goals. In support of this progress towards therapeutic goals, periodic revision or modification of the treatment plans needs to be documented.

### Exclusions

The following does not meet medical necessity guidelines:

- Patients are not meeting goals and treatment plans have not been revised
- Reimbursement for treatment in the school setting or by school personal

- Services are being provided for vocational or recreational basis in the following environments: camps, vacations, schools
- Services based on developmental delays due to unrelated ASD medical condition.
- Custodial care activities.

### CPT Codes / HCPCS Codes / ICD Codes

*Inclusion or exclusion of a code does not constitute or imply member coverage or provider reimbursement. Please refer to the member's contract benefits in effect at the time of service to determine coverage or non-coverage as it applies to an individual member. A draft of future ICD-10 Coding related to this document, as it might look today, is included below for your reference.*

*Providers should report all services using the most up-to-date industry-standard procedure, revenue, and diagnosis codes, including modifiers where applicable.*

*The following codes are included below for informational purposes only; this is not an all-inclusive list.*

**The above medical necessity criteria MUST be met for the following codes to be covered for Commercial Members: Managed Care (HMO and POS), PPO, Indemnity, Medicare HMO Blue and Medicare PPO Blue:**

#### HCPCS Codes

HCPCS codes	Code Description
H0031 <sup>1</sup>	Mental health assessment, by non-physician
H0032 <sup>2</sup>	Mental health service plan development by non-physician
H0046 <sup>3</sup>	Mental health services, not otherwise specified
H2012 <sup>3</sup>	Behavioral health day treatment, per hour
H2014 <sup>4</sup>	Skills training and development, per 15 minutes
H2019 <sup>5</sup>	Therapeutic behavioral services, per 15 minutes

<sup>1</sup>when specified as functional assessment and treatment plan developed for Applied Behavior Analysis (ABA) services by a Qualified Autism Service Provider (licensed clinician or Board Certified Behavioral Analyst (BCBA)

<sup>2</sup>when specified as supervision of a Qualified Autism Service Professional or Paraprofessional by a Qualified Autism Service Provider

<sup>3</sup>when specified as direct ABA services by a Qualified Autism Service Professional

<sup>4</sup>when specified as skill development, social skills group activity

<sup>5</sup>when specified as direct ABA services by a Qualified Autism Service Paraprofessional

**The following ICD Diagnosis Codes are considered medically necessary when submitted with the CPT codes above if medical necessity criteria are met:**

#### ICD-9-CM Diagnosis Codes

ICD-9-CM diagnosis codes:	Code Description
299.00	Autistic disorder, current or active state
299.01	Autistic disorder, residual state
299.10	Childhood disintegrative disorder, current or active state
299.11	Childhood disintegrative disorder, residual state
299.80	Other specified pervasive developmental disorders, current or active state
299.81	Other specified pervasive developmental disorders, residual state

299.90	Unspecified pervasive developmental disorder, current or active state
299.91	Unspecified pervasive developmental disorder, residual state

### ICD-10 Diagnosis Codes

ICD-10-CM Diagnosis codes:	Code Description
F84.0	Autistic disorder
F84.3	Other childhood disintegrative disorder
F84.5	Asperger's syndrome
F84.8	Other pervasive developmental disorders
F84.9	Pervasive developmental disorder, unspecified

### Description

This document addresses the use of Applied Behavioral Analysis (ABA) when included in relevant state mandates, as treatment for Autism Spectrum Disorder (ASD) when a state mandate requires or benefit plan language explicitly provides coverage for ABA.

The diagnosis of ASD can be complex and difficult due to the diversity of the presentation of symptoms and their severity. Due to the multitude of possible causes and potential confusion with other conditions, many tests exist to diagnose ASD that may or may not be appropriate. It is vital that parents or guardians of children suspected of having an ASD seek early diagnosis and care for the child to increase any potential benefits of treatment. The recommendations for evaluation and assessment of Autism Spectrum Disorders as published by the American Academy of Neurology (Filipek, 2000), the Child Neurology Society and the American Academy of Pediatrics (Johnson, 2007) and the American Academy of Child and Adolescent Psychiatry (Volkmar, 1999) are good resources to utilize.

Autism spectrum disorder, as defined in the fifth edition of the American Psychiatric Association's (APA) *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5), includes disorders previously referred to as:

- Atypical autism
- Asperger's disorder
- Childhood autism
- Childhood disintegrative disorder
- Early infantile autism
- High-functioning autism
- Kanner's autism
- Pervasive developmental disorder not otherwise specified.

### Summary

ABA interventions require a demonstration of the events that are responsible for the occurrence, or non-occurrence, of behavior. ABA uses methods of analysis that yield convincing, reproducible, and conceptually sensible demonstrations of how to accomplish specific behavior changes (Baer & Risley, 1987). Moreover, these behaviors are evaluated within relevant settings such as schools, homes and the community. This process includes the following components:

- selection of interfering behavior or behavioral skill deficit
- identification of goals and objectives
- establishment of a method of measuring target behaviors
- evaluation of the current levels of performance (baseline)
- design and implementation of the interventions that teach new skills and/or reduce interfering behaviors
- continuous measurement of target behaviors to determine the effectiveness of the intervention, and

- ongoing evaluation of the effectiveness of the intervention, with modifications made as necessary to maintain and/or increase both the effectiveness and the efficiency of the intervention. (MADSEC, 2000, p. 21-23)

As the MADSEC Report describes above, treatment approaches grounded in ABA are now considered to be at the forefront of therapeutic and educational interventions for children with autism. The large amount of scientific evidence supporting ABA treatments for children with autism have led a number of other independent bodies to endorse the effectiveness of ABA, including the U.S. Surgeon General, the New York State Department of Health, the National Academy of Sciences, and the American Academy of Pediatrics. <http://www.centerforautism.com/aba-therapy.aspx>

## Policy History

Date	Action
11/2015	New medical policy describing medically necessary and not medically necessary indications. Effective 11/1/2015.

## Information Pertaining to All Blue Cross Blue Shield Medical Policies

Click on any of the following terms to access the relevant information:

[Medical Policy Terms of Use](#)

[Managed Care Guidelines](#)

[Indemnity/PPO Guidelines](#)

[Clinical Exception Process](#)

[Medical Technology Assessment Guidelines](#)

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